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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 486

ROBERTSON ROCK BIT COMPANY, INC., INDUSTRIAL MANUFACTURING & TOOL CO., and COLIN T. ROBERTSON,

Petitioners,

v.

HUGHES TOOL COMPANY,

Respondent.

SUPPLEMENTAL BRIEF OF RESPONDENT IN OPPOSITION TO MOTION AND SUPPLEMENTAL BRIEF OF PETITIONERS.

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The Scheffer Press, Inc.—FInancial 6-2694

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The Supplemental Brief of the Petitioners urges that the Court of Appeals for the Tenth Circuit in *C. F. Williams, Jr.* v. *Hughes Tool Company,* Case No. 3915, has entered a decision "in direct conflict with the decision below". In this, Petitioners err.

The Court of Appeals for the Tenth Circuit has not decided the *C. F. Williams, Jr.* case, and presumably will not decide it until after the reargument now set for May 11, 1950. There can be no conflict of decision until there is a "decision".

Further, if the letter of the Clerk of the Court of Appeals for the Tenth Circuit be considered as a decision of that Court that C. F. Williams, Jr. had not infringed cer-

tain patents of the Hughes Tool Company by retipping dull teeth of Respondent's bits, there would still be no conflict of decision with the instant case. The Petitioners' argument purporting to find a conflict (Supplemental Brief, p. 5) is based upon the spurious logic that a patent owner bringing suit for infringement and losing on the ground of non-infringement thereby has attempted "to extend the patents beyond their legitimate scope" and is therefore guilty of misuse of such patents.

The fallacy in the Petitioners' argument is apparent from the mere statement of it. One does not misuse a patent by suing in good faith to enforce it. Neither does a holding of non-infringement of valid patents carry the implication of a misuse of such patents.

Petitioners suggest that the Court below found there had been no misuse on the ground that rebuilding of teeth constituted patent infringement. This was not the basis of decision. What the Court held was that a person making *a bona fide* claim for violation of patent rights, was not misusing his patents. The Court of Appeals for the Tenth Circuit did not hold to the contrary. Indeed, had it held to the contrary, it would have, upon finding non-infringement, dismissed the bill for misuse of patents. Rather than doing this, the Court has asked for reargument upon additional questions in the case, premised upon its conclusion that the patents, though valid, were not infringed by Williams' acts of retipping or rebuilding because such retipping constituted repair and not reconstruction.

CONCLUSION.

It is submitted that there is no conflict of decision; that the original Petition for Certiorari was properly denied; that there have been no intervening circumstances of controlling effect; and that the Petition for Rehearing should be denied.

Respectfully submitted,

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